

**BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of)	PARTIAL ORDER OF
ALLAN MOATES; HAROLD AND)	DETERMINATION
MARIA MOATES, TRUSTEES,)	
PENTAIL CO; COLLINS PRODUCTS,)	
LLC.)	Water Right Claim 193
_____)	

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE AMENDED PROPOSED ORDER**

1. Claim 193 (Claimants: ALLAN MOATES; HAROLD AND MARIA MOATES, TRUSTEES, PENTAIL CO; COLLINS PRODUCTS LLC.) and its associated contests (3183, 3838, and 4180) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 130.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 193 on January 15, 2004.
3. Exceptions were filed to the Proposed Order by the United States of America, two days after the exception filing deadline.¹
4. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 193.
5. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the season to April 1 through October 31 because the season of use in the June 2, 2006 Proposed Order exceeded the claimed season of use, and to correct and clarify the location descriptions of claimed acreage. The Amended Proposed Order replaced the 2004 Proposed Order in its entirety.

¹ The Proposed Order was served on all parties on January 15, 2004. Per OAR 137-003-0650, notice was given in the Proposed Order that “parties may file exceptions to this Order with the Adjudicator within 30 days of service of the Order.”

6. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by United States of America. Responses to the United States' Exceptions were filed by Claimant Allan Moates within the response filing deadline.
7. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 193, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.
8. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. The claimed place of use is subject to natural subirrigation from the Klamath River. The use of water by natural subirrigation is a privilege only, and does not constitute a water right. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property. This may not be altered by the use of any physical means to modify the manner in which natural subirrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural subirrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for this privilege described in this paragraph.
4. Based on the file and record herein, IT IS ORDERED that Claim 102 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 193

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 39 S, R 9 E

CLAIMANTS: ALLAN MOATES
7100 HWY 97 S
KLAMATH FALLS OR 97601

HAROLD AND MARIA MOATES, TRUSTEES
PENTAIL CO.
1644 EVERGREEN DR
CARSON CITY, NV 89703

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION OF 40.6 ACRES FROM A POINT OF DIVERSION

RATE OF USE:

1.02 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 6, 1875

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
39 S	9 E	WM	18	SE SE	11

THE PLACE OF USE IS LOCATED AS FOLLOWS:


IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	9 E	WM	18	SE SE	11	4.5
39 S	9 E	WM	19	NE NE	7	10.6
39 S	9 E	WM	19	NW NE	8	2.2
39 S	9 E	WM	19	SE NE	1	5.7
39 S	9 E	WM	19	SE NE	6	13.1
39 S	9 E	WM	19	NE SE	2	4.5

FURTHER LIMITATIONS:

THE RIGHT TO USE WATER IS LIMITED BY THE PRINCIPLE OF BENEFICIAL USE WHEN THE AUTHORIZED PLACE OF USE IS SUBJECT TO SUBIRRIGATION FROM THE SAME SOURCE.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication